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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,708	10/02/2003	Jerry H. Stoller	SLRE.103540	9195
7590 Walter R. Brookhart Shook, Hardy & Bacon LLP Suite 1600 600 Travis Houston, TX 77002				
04/01/2009				
EXAMINER				
PRYOR, ALTON NATHANIEL				
ART UNIT		PAPER NUMBER		
1616				
MAIL DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/677,708

Applicant(s)

STOLLER, JERRY H.

Examiner

ALTON N. PRYOR

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1.5-14, 16-18, 20-31, 33-45 and 47-70 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1.5-14, 16-18, 20-31, 33-45 and 47-70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's arguments filed 12/10/08 have been fully considered but they are not persuasive. Previous rejections not addressed below are withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,5-14,16-18,20-22,25-31,33-45,47-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clough (USPN 4496388; 1/29/85). Clough teaches a fungicidal composition comprising metal complex of the compound of formula I (abstract, column 6 lines 14-18). Clough teaches that the composition can comprise additional compounds such as auxins including indoleacetic acid, indole butyric acid, and naphthacetic acid (column 11 lines 7-39), anionic surfactants including calcium lignosulphonate (column 10 lines 1-18) as well as ingredients such as calcium carbonate (column 9 lines 3-19) Clough teaches that the composition can exist in many forms including aqueous dispersions (column 9 lines 25-68). Clough teaches a method of controlling fungi such as phytophthora and rhizoctonia (column 6 lines 39-50) growth on plants such as coffee beans, soya beans and potatoes, i.e. monocots and dicots (column 6 lines 19-36, lines 55-66, column 7 lines 41-64), by applying the composition onto plants and/or their seeds. Clough does not exemplify an invention of controlling fungi by applying a composition comprising metal complex of the compound of formula

I, indoleacetic acid, indole butyric acid and calcium lignosulphonate onto plants and/or their seeds. However, it would have been obvious to arrive at such an invention since Clough suggests the combination of ingredients to be applied to plants and/or their seeds to control fungi growth. Clough does not teach the invention of treating onion plants and/or their seeds with the auxin and metal mixture. It would have been obvious to do this since an onion plant is a monocot plant.

Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clough as applied to claims 1,5-14,16-18,20-22,25-31,33-45,47-70 above, and further in view of Drake et al (GB 1565906; 4/23/80) or Eden et al (4755397; 7/5/88). Clough teaches all that is recited in claims 23 and 24 except for the encapsulation of the auxin. Drake et al (abstract and claims) and Eden et al (entire reference) teach the encapsulation of actives such as fungicides to allow slow release of the fungicide. Therefore one having ordinary skill in the art would have been motivated to encapsulate the fungicide if slow release of the active was desired. The encapsulation of actives to gain slow release of the actives is a well known process.

Response to Applicant's argument

The Applicants argues that Clough teaches the use of hazardous compounds such as triazole and imidazole, whereas instant invention avoids the use of hazardous chemicals. Clough does not such the substitution of hazardous triazole and imidazole compounds by instant environmentally friendly auxins. The Examiner argues that claims employ "comprising" language which allows for the inclusion of additional method steps such as a step of adding a hazardous chemical like those disclosed in Clough.

Applicant argues that neither the Clough patent nor the Drake and Eden patents, discloses/suggests the claimed use of an auxin as a means for controlling the infestation of fungi and insects and their larvae on plants. Clough does not teach/suggest the use of auxins together with micronutrients to protect plants from attack by fungi and insects and their larvae in the absence of triazole and imidazole compounds. The Examiner argues that Clough suggest that to his composition can be added other ingredients such as indoleacetic acid (auxin), indole butyric acid (auxin) and calcium carbonate (alkaline metal source). See column 9 lines 3-19 and column 11 lines 7-39. Clough teaches that the composition can be applied to plants in order to control fungi growth (column 6 line 19 - column 7 line 64). While it is true that Clough does not exemplify a composition comprising indole acetic acid or indole butyric acid plus calcium carbonate and the composition's application to plants, Clough does suggest the combination of ingredients and its application to plants; thus, the suggestion makes obvious the instant invention. A reference is not required to provide all composition and application method scenarios to render an invention obvious. It is reiterated that instant claims employ "comprising" language which allows for the inclusion of additional method steps such as a step of adding a hazardous chemical like those disclosed in Clough.

Other Matters

The Examiner inadvertently omitted the rejection of claims 33-45 in the office and mailed 7/10/08. This matter has been corrected in this official office action. It is clear that the rejection mailed on 7/10/08 addresses claims 33-45 involving the application

and application rate of auxin and alkaline metal to plants/plant parts. Also see claim index dated 7/4/08.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALTON N. PRYOR whose telephone number is (571)272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/
Primary Examiner, Art Unit 1616